

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California**

October 20, 2021 at 9:00 a.m.

1. 20-20302-E-13 DPC-4	OMAR URCUYO Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 6-7-21 [88]
-------------------------------------------------------------------	---------------------------------------	-----------------------------------------------------------------------------

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 7, 2021. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Omar Bermudez Urcuyo ("Debtor"), has failed again to file and set to confirmation an amended Plan.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 16, 2020. Dckt. 81. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an Opposition on July 20, 2021. Dckt. 92. Debtor requests a continuance of 60 days to file, set, and serve an amended plan. *Id.* In his Declaration, Debtor states that he has paid a total of \$23,320.00 and has not been delinquent in plan payments. Dckt. 93. However, Debtor explains that he has been in Nicaragua taking care of family who have been affected by COVID-19 and unable to return home but will be returning “shortly.” *Id.*

At the hearing, the parties concurred with the court continuing the hearing.

October 20, 2021 Hearing

Nothing further has been filed by Debtor in this case in the seventy-seven (77) days that have passed since the prior hearing on this Motion to Dismiss. Though Debtor has been in this bankruptcy case since January 20, 2020, Debtor has been unable to confirm a Chapter 13 Plan in this case, which is now 22 months old. The court’s ruling on the Motion to Confirm the proposed Amended Plan addresses some significant deficiencies in the Plan and prosecution for this case. Civil Minutes, Dckt. 80. In the proposed Amended Plan (Dckt. 60), Debtor provided for paying only \$2,000 a month into the Plan. No creditors are to be paid, except the holding of the deed of trust against Debtor’s home, for which the pre-petition arrearage is (\$408,091.87).

Debtor’s latest financial information under penalty of perjury in (a Janus face) Amended/Supplemental Schedule I (Dckt. 63), Debtor has business income of \$1,250, disability income of \$951.72, and Food Stamps of \$180. To Make ends meet and purport to have \$2,000 a month in net income, Debtor also lists on Amended/Supplemental Schedule I that Debtor gets \$1,000 a month in “family support.”

On (Janus face) Amended/Supplemental Schedule J, Debtor lists having two dependants, adolescent children. *Id.* at 15-16. For the Debtor and his two children, he states having only (\$10) a month in repair and maintenance expenses for his residence, only (\$150) a month in food and housekeeping supplies; only (\$5.00) a month in clothing for the three of them, only (\$5.00) a month in medical and dental expenses, and only (\$140) a month for vehicle repairs, and maintenance. These expenses appear to be grossly unrealistic and mere “fabrication” to generate a bottom line net income number.

When Debtor filed his Opposition to the Motion to Dismiss in July 2021, he argued that he had paid \$23,000 to date to the Trustee. Dckt. 92. The court notes that all of that money, above the Chapter 13 Trustee’s fees, to pay Debtor’s counsel and the creditor having a secured claim against his residence. The dismissal of this case will do no prejudice to Debtor, with all of the money paid going directly to Debtor’s benefit in delaying now for 22 months the foreclosure on his real property by paying that creditor substantially all of the money paid into the Plan.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. There is prejudicial delay to creditors and Debtor has demonstrated that he is unable to prosecute this case. Further, “forcing” the Debtor to fit into a 60 month plan after 22 months have expired without a confirmed plan will be of prejudice to Debtor. He and his counsel will benefit from this case being dismissed and Debtor having a (relatively) clean slate if a new case

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

2. [17-23305-E-13](#) **CHERRI DA ROZA** **MOTION TO DISMISS CASE**
[DPC-4](#) **Candace Brooks** **9-22-21 [107]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Cherri Mae Da Roza ("Debtor"), is delinquent on plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on October 6, 2021. Dckt. 111. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$1,541.00 delinquent in plan payments, which represents multiple months of the \$735.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

3. [17-27906-E-13](#) **PAMELA SPRING** **MOTION TO DISMISS CASE**
[DPC-4](#) **Mohammad Mokarram** **9-21-21 [74]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Pamela Gaynell Spring (“Debtor”), is delinquent on plan payments.

DEBTOR’S REPLY

Debtor filed a Reply on October 6, 2021. Dckt. 78. Debtor states they are nearly done with her Chapter 13 plan and Counsel for Debtor has been trying to get a hold of the Debtor to no avail.

DISCUSSION

Delinquent

Debtor is \$504.00 delinquent in plan payments, which represents multiple months of the \$252.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Iesha Shaney Nickerson ("Debtor"), has an overextended plan.
2. Is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an opposition on October 6, 2021 stating:

1. She will bring the account current.
2. She needs much more time to modify the plan, she does not want it to go to 57 months.
3. She is looking for more disposable income.

In Debtor's Declaration, filed October 7, 2021, Debtor states she has been experiencing health problems. Debtor requests the court to allow her until the end of the year to modify the Plan.

DISCUSSION

Material Default for Breaching a Plan Term

Debtor is in material default under the Plan because the Trustee calculates the plan will take 57 months to complete versus 36 proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Delinquent

Debtor is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay and needing more time to modify the plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Richard L. Crabtree ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 67. Debtor states the delinquency will be cured by the middle of November 2021.

DISCUSSION

Delinquent

Debtor is \$3,776.00 delinquent in plan payments, which represents multiple months of the \$1,888.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee also wants to note that the Stipulation filed on July 13, 2017 is inconsistent with the Proof of Claim filed by the Internal Revenue Services ("IRS"). Dckt. 45, Proof of Claim 2-2. Trustee contends that if the numbers are inconsistent and increased the amount being paid to the IRS, then the Plan will run longer than the required 60 months.

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case

is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

6. [18-25114-E-13](#) **DAVID HOWERTON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **9-21-21 [89]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, David De Vaughn Howerton (“Debtor”), is delinquent on plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 93. Debtor has remitted the sum of

\$3,800.00 on October 4, 2021 to the Trustee and requests a 30 day continuance to cure the remaining delinquency.

DISCUSSION

Delinquent

Debtor is \$3,115.00 delinquent in plan payments, which represents multiple months of the \$1,955.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise Debtor paid is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Courtney Allyn Wilson ("Debtor"), is delinquent on three months of payments, with another due prior to the date of the hearing.

DEBTOR'S RESPONSE

Debtor filed a Response on October 4, 2021. Dckt. 66. Debtor states the delinquency will be cured prior to the hearing date as the Debtor is a traveling nurse, and the Debtor will mail the amount due on October 4, 2021. *Id.*

DISCUSSION

Delinquent

Debtor is \$14,908.74 delinquent in plan payments, which represents multiple months of the \$4,956.52 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$19,865.66. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause does exist to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

8. [19-25324-E-13](#) **BETHANY SANDERS-JOHNSON** **CONTINUED MOTION TO DISMISS**
[DPC-5](#) **Peter Macaluso** **CASE**
7-7-21 [110]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 7, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the bankruptcy case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Bethany Elaine Sanders-Johnson (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on July 21, 2021. Dckt. 114. Debtor requests the hearing be continued so that Debtor has additional time to file, set, and serve a Modified Plan.

DISCUSSION

Delinquent

Debtor is \$10,505.97 delinquent in plan payments, which represents multiple months of the \$2,407.85 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing the Trustee reported that Debtor is still delinquent, but does not oppose, under these circumstances, a continuance to allow Debtor and counsel to file a new plan and motion to confirm.

August 11, 2021 Hearing

The court, due to changes in calendar and good cause, continued the matter for October 20, 2021.

October 20, 2021 Hearing

Nothing further has been filed by the Debtor or Trustee. Though Debtor has had ninety-one (91) days since requesting some “additional time to file, set, and serve a Modified Plan;” Opposition ¶ 3, Dckt. 114, more than three months has not been sufficient for Debtor to file a Modified Plan and prosecute this case.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. There is prejudicial delay in Debtor’s failure to prosecute this case. With the substantial monetary defaults, it may well be of prejudice to Debtor to continue in this case, but instead to Debtor’s benefit in having it dismissed. If Debtor can prosecute a bankruptcy plan, then Debtor can file a new case.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 30, 2021. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the bankruptcy case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Njoroge James Ngichu ("Debtor"), has failed to file a new plan and has no pending plan after the previous plan was rejected by Trustee's objection

DEBTOR'S RESPONSE

Debtor filed a Response on September 23, 2021. Dckt. 47. Debtor states that he has attempted to refinance his 2nd mortgage on his home owed to Specialized Loan Servicing and has been unsuccessful. The Debtor now says he will file a new amended plan after this response, and the Docket indicated that the new amended plan has been filed. Dckt. 49. A hearing on the Application to Amend is to be held on November 2, 2021.

No modified plan has been filed. The Motion is a "Motion to Amend Chapter 13 Plan." Dckt. 49. The grounds stated with particularity and relief sought consists of:

The Debtor proposes that the Chapter 13 Plan filed herewith be approved as the Debtor's plan.

Debtor is amending his plan to include the correct amount of arrears due to Secured Creditor, U.S. Bank.

No plan has been approved or confirmed.

A true and correct copy of the plan is filed herewith and made a part hereof.

Even if the court were to accept each of the grounds stated above with particularity (Fed. R. Bankr. P. 9013) as true, it fails to state sufficient grounds for the court to confirm a Chapter 13 Plan as required in 11 U.S.C. §§ 1325, 1322.

Additionally, there is no Amended Plan filed on the Docket. Rather, hidden behind the one page “motion” stating the above grounds with particularity, is a Chapter 13 Plan form titled “Second Amended Plan.” There is no basis for failing to file the Plan as a separate pleading, clearly setting it forth on the Docket.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. There is prejudicial delay, as well as Debtor failing to comply with the basic, well know, pleading and document filing requirements in bankruptcy cases. If Debtor can prosecute a Chapter 13 case, he may seek to do so in a new case, with a (relatively) clean slate.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

10. [19-25526-E-13](#) **BRANDON/REBECA**
[DPC-2](#) **DOMINGUES HENDERSON**
Mary Ellen Terranella

MOTION TO DISMISS CASE
9-21-21 [64]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtors, Brandon Shane Henderson and Rebeca Domingues Gobatti Henderson ("Debtors"), are delinquent for three months payment, with another coming due.

DEBTORS' OPPOSITION

Debtors filed an Opposition on September 30, 2021. Dckt. 68. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtors are \$1,955.05 delinquent in plan payments, which represents multiple months of the \$685.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$2,640.05. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtors, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause does exist to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

11. [16-28228-E-13](#)
[DPC-3](#)

DORIS ALLEN
Chad Johnson

MOTION TO DISMISS CASE
9-21-21 [\[118\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Doris Lena Allen (“Debtor”), is delinquent on plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on October 6, 2021. Dckt. 122. Debtor states they have been ill making it difficult to discuss their options and will work with counsel to file a modified plan.

DISCUSSION

Delinquent

Debtor is \$7,330.00 delinquent in plan payments, which represents multiple months of the \$2,136.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 30, 2021. The court computes that 82 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on June 25, 2021 and \$78.00 July 26, 2021. At the time of the order, subsequent payments of \$78.00 were to be due on August 24, 2021 and September 23, 2021

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured. The first payment was received on June 28, 2021 for \$80.00. Receipt 32061 by 10. The second payment was received on August 9, 2021 for \$100.00. Receipt 9289 by 01. The third payment was received on August 18, 2021 for \$100.00. Receipt 47202 by 23. The final payment was received on September 22, 2021 for \$33.00. Receipt 9500 by 55. Debtor's payments fulfilled the amount due for the court's required fees, \$313.00.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Matthew Donald Blasingame and Kristie Marie Blasingame ("Debtor"), is causing an unreasonable delay.

DEBTOR'S REPLY

Debtor filed a Reply on October 6, 2021. Dckt. 40. Debtor states a new plan and motion to confirm is on file well before the hearing on this matter.

DISCUSSION

No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 11, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the amended plan having been filed and the Debtor appearing to be actively prosecuting the case, the court denies the Motion without prejudice.

Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the

Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtors, Paul Wilson and Jessica Mainvoille-Wilson (“Debtor”), are delinquent in plan payments under the confirmed plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 97. Debtor states the delinquency was caused by Debtor’s loss of her job during the COVID-19 pandemic. She was able to make partial payments thanks to EDD to cover ongoing mortgage payments. Debtor has received a new job with the State of California on July of 2021, as supported in Debtor’s declaration (Dckt. 98), and believes that she has the means to support a modified Chapter 13 plan which she will file before the October 20 hearing.

DISCUSSION

Delinquent

Debtor is \$5,150.00 delinquent in plan payments, which represents multiple months of the \$1,915.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$7,065.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

15.	<u>16-23631</u> -E-13 <u>DPC-1</u>	BARBARA LADOUCER Douglas Jacobs	CONTINUED MOTION TO DISMISS CASE 6-28-21 <u>[33]</u>
-----	-----------------------------------------------------------------------	--------------------------------------------------	-------------------------------------------------------------------------------------------------

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 28, 2021. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted and the bankruptcy case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Barbara Jena LaDoucer (“Debtor”), has proposed a plan

which exceeds 60 months.

2. Debtor is delinquent in plan payments under the confirmed plan.

Debtor Opposition

Debtor filed an Opposition on July 20, 2021. Dckt. 37. Debtor states that while the Trustee reports that \$7,481.40 to be paid to complete the plan, Debtor has not ability to pay it on her own. Debtor does not dispute that there remains \$7,481.40 to be paid. Debtor states that she will seek the funds from family and friends. *Id.* Debtor requested a 30 to 60 day continuance to accomplish this.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 72 months. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Delinquent

Debtor is \$2,935.70 delinquent in plan payments, which represents multiple months of the \$1,440.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a Reply on July 20, 2021 requesting a 30 or 60 day continuance so that she may seek assistance from her family to payoff the plan in a timely manner as she does not currently have \$7,481.40 on hand to cure the default. Dckt. 37.

At the hearing counsel for the Trustee reported that the Debtor is at the end of the Plan, and a continuance to the October 2021 date was not opposed.

August 11, 2021 Hearing

The court, due to changes in calendar and good cause, continued the matter for October 20, 2021.

October 20, 2021 Hearing

Though this case is now more than five years old, nothing further has been filed by Debtor to address this Motion. Debtor has not addressed this financial problem though no having ninety-one (91) days since filing her Opposition.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. Debtor has not completed her plan and is unable to prosecute this case as required by the Bankruptcy Code.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

16.	<u>20-23835-E-13</u> <u>DPC-2</u>	ROYLEE/FLORENCE WOOLFORD Mikalih Liviakis	MOTION TO DISMISS CASE 9-22-21 [43]
-----	----------------------------------------------------------------------	----------------------------------------------------------------------	------------------------------------------------------

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Timely Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Roylee and Florence Maureen Woolford (“Debtor”), are delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$8,560.19 delinquent in plan payments, which represents multiple months of the \$2,768.95 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$11,329.14. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor’s Response

The Debtor filed a Response to the Trustee’s Motion to Dismiss on October 13, 2021. In the Response the Debtor promises to pay all of their debts within the next sixty (60) days. This is not sufficient grounds for the Trustee to withdraw their Motion nor sufficient grounds to deny the Trustee’s Motion to Dismiss. Further, the Debtor filed this Response seven (7) days before the hearing date which is not sufficient notice because proper notice would have been fourteen (14) days per LBR 9014-1(f)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtor, Rosa E. Martinez ("Debtor"), is delinquent on 2 months of payments, with another payment due by the hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 28, 2021. Dckt. 47. Debtor states that she has been in regular contact with the Trustee's office, and Debtor claims that their communications indicate that she is current on all payments based on those communications. Debtor will review her own records to confirm if she is delinquent, and work with the Trustee's office to come to a reasonable solution.

DISCUSSION

Delinquent

Debtor is \$6,482.86 delinquent in plan payments, which represents multiple months of the \$3,204.84 plan payment. Before the hearing, another plan payment will be due, putting the total payment required to \$9,685.70 for the plan to be current by the date of hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a claim that she believes she is current is not evidence that resolves the Motion.

Based on the foregoing, cause does exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on August 30, 2021. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the bankruptcy case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The Debtors, Corey Ahron Dennis Garcia and Brittania Ann Garcia ("Debtors"), are delinquent for one month payment.
2. Debtors' have not filed an amended plan after the Court Sustained Trustee's Objection to Plan. Dckt. 31.

DEBTORS' OPPOSITION

Debtors' filed an Opposition on August 31, 2021. Dckt. 40. Debtor states the delinquency will be cured prior to the hearing date due to the fact that the missing payment was mailed in 'late' August 2021 for \$905.00. Furthermore, filings for a First Amended Chapter 13 Plan will be, and have been as of September 7, 2021 (Dckt. 42), filed with a confirmation hearing.

DISCUSSION

Delinquent

Debtors are \$950.00 delinquent in plan payments, which represents one month of the \$950.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Delay of Confirmation

Debtor had not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 29, 2021.

A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan on September 7, 2021 (Dckt. 42), with a motion to approve said plan on September 16, 2021 (Dckt. 46). Debtor does not provide a reason for delay, but First Amended Chapter 13 plan has been set for a confirmation hearing on November 2, 2021.

A review of the Motion to Confirm the Amended Plan indicates that it fails to comply with the basic pleading requirements of Federal Rule of Bankruptcy Procedure 9013 which requires the grounds to be stated with particularity. Rather, the grounds stated with particularity consist of alleging:

The Debtors hereby request that the Court confirm the First Amended Chapter 13 Plan filed by the Debtors on September 7, 2021, Docket No. 42.

The Plan has been amended to resolve the Objections to the original plan filed by the Chapter 13 Trustee and Capital One Auto Finance. The Debtors have attended their §341(a) Meeting of Creditors which was scheduled for June 3, 2021.

The Plan was amended to properly lists claims under their correct classification and to account for the secured priority claim that was filed by the Internal Revenue Service.

The Debtors believe that the First Amended Chapter 13 Plan satisfies the requirements of 11 U.S.C. §§1322 and 1325; that it will be acceptable to the Trustee; that it will not be objectionable to creditors or their interest and that it furthers the goals of the Bankruptcy statutes.

Wherefore, the Debtors request that the Court confirm the First Amended Chapter 13 Plan and permit the Debtors to proceed under this Plan

Dckt. 46.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the stating with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" is insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as

true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Not stating with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Finally, though an attorney may argue that his or her writing is so good that the court can and should waive this basic rule of pleading, the court will not engage in a differential application of the Rules. Request the court to tell one attorney that is or her work is good enough to be exempt from the Rules and another attorney must comply with the Rules is to send the court on a fool's errand. Though in an academic sense one might be able to distinguish based on such quality differences, it inevitably creates the appearance that the judge is not impartial, but has her or her "favorite" attorneys who get whatever they ask for from the judge.

Debtor's Declaration

A review of Debtor's Declaration in support of Confirmation provides the following testimony:

- (1) Debtors are over the age of 18 years;
- (2) an amended plan has been filed to resolve objections to the original plan;
- (3) Debtors appeared at the § 341 Meeting;
- (4) the amended plan provides for monthly payments of \$950 for 12 months, but then they will step up to \$6,506.06 a month for 48 months; and
- (5) Debtors request the court confirm the plan.

Dckt. 48. Such testimony does not provide evidence to satisfy the requirements of 11 U.S.C. § 1325 and § 1322.

The court notes that Debtors, under penalty of perjury, state on Amended Schedule J that they have only \$1,205.83 on monthly net income to fund a Plan. Dckt. 41. This was filed on September 7, 2021. Nothing in the Declaration shows how Debtors will be able to make \$6,506.06 in monthly plan payments.

Cause has been shown pursuant to 11 U.S.C. § 1307(c) to dismiss this case. There is prejudicial delay to creditors, as well as the “shifting financial sands” of Debtor demonstrating that Debtors cannot prosecute this case. Dismissal of this case is proper. That will afford Debtors and counsel to revisit the Debtors’ finances, determine what Debtor’s real expenses are, and how to compute a projected disposable income that can fund a proposed plan. That can be accomplished in a new case, if such is possible.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Robin Arlene and Thomas Scott Harland ("Debtor"), are delinquent in plan payments under the confirmed plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 87. Debtor Robin Arlene Harland died on or about Tuesday, September 23, 2021. Dckt. 86. Debtor, Thomas Harland, is determining survivor's benefits for himself, and requests a 90 day continuance. Debtor intends to remain current while determining if a modification or other plan is appropriate.

DISCUSSION

Delinquent

Debtor is \$8,448.00 delinquent in plan payments, which represents multiple months of the \$3,582.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$12,030.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, taking time to determine if a plan modification or other action is appropriate is not evidence to resolve this motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

20. [19-21741-E-13](#) **ROLDAN SEBEDIA** **MOTION TO DISMISS CASE**
[DPC-2](#) **Matthew DeCaminada** **9-22-21 [128]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Roldan Sebedia (“Debtor”), are delinquent in plan payments under the confirmed plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 133. Debtor states the delinquency is caused by a reduction in overtime hours and will submit a modified plan before the October 20, 2021 hearing date.

DISCUSSION

Delinquent

Debtor is \$9,450.00 delinquent in plan payments, which represents multiple months of the \$3,150.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$12,600.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela ("Debtor"), have failed to provide adequate 11 U.S.C. § 521 documentation.

DEBTOR'S RESPONSE

Debtor filed a Response on October 6, 2021. Dckt. 74. Debtor states they had a mistaken belief that they filed the documents, and they apologize for the error. They will file the necessary 521 documents.

DISCUSSION

Failure to File Documents Related to Petition

Trustee filed a Motion to Dismiss based on Debtor's failure to file:

- A. Adequate Protection Payments
- B. Employer Payment Advices
- C. Chapter 13 Plan.

Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Two years of tax returns, or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file 521 documents is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is

dismissed.

22. [21-21745-E-13](#) **MICHAEL/CAROL STANFORD** **MOTION TO DISMISS CASE**
[DPC-2](#) **Gary Fraley** **8-23-21 [36]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 23, 2021. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied and the bankruptcy case shall proceed in this court.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtors, Michael Roland Stanford Sr. and Carol Ann Stanford (“Debtors”), have no pending plan on file.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 40. Debtors state that a new, amended Chapter 13 plan has been filed with arrangements to pay the extra claims that come in.

Plan and Motion to Confirm Filed

Debtor has filed an Amended Plan (Dckt. 49) and Motion to Confirm (Dckt. 43) to address the defaults. From the court’s preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 46) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor’s active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

23. [21-22545](#)-E-13

DARYLL DESANTIS
Scott Johnson

**CONTINUED NOTICE OF INTENT
TO DISMISS CASE
7-13-21 [3]**

**MATTER TO BE HEARD AT 11:30
AM**

On July 13, 2021, the court issued a notice of intent to dismiss the bankruptcy case for failure to file (1) Statement of SSN - Form 121 - and (2) Verification and Master Address List. The court continued the matter to October 20, 2021 at 11:30 am to be heard in conjunction with other matters relating to the bankruptcy case.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is Granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Bret Michael Benzinger ("Debtor"), is delinquent in plan payments under the confirmed plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 32. Debtor states the delinquency will be cured prior to the hearing date, and the Debtor has paid a portion of the sum in question. Furthermore, Debtor submitted a declaration that stated an amended plan will be filed. Dckt. 33.

DISCUSSION

Delinquent

Debtor is \$2,000.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$2,700.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay and/or file an amended plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

25. [19-21951-E-13](#) JASMINE SMITH MOTION TO DISMISS CASE
[DPC-4](#) Scott Shumaker 9-22-21 [101]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the Debtor, Jasmine Rae Smith (“Debtor”), is delinquent on two months of payments, with another due at the date of filing.

DEBTOR’S RESPONSE

Debtor filed a Response on October 4, 202. Dckt. 105. Debtor states the delinquency will be cured prior to the hearing date or that the Debtor will file a new plan that is feasible by the date of the hearing.

DISCUSSION

Delinquent

Debtor is \$584.00 delinquent in plan payments, which represents two months of the \$292.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$876.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay and/or file an amended plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, David Thomas and Nicole Marie Wills ("Debtors"), are delinquent in plan payments under the confirmed plan
2. The debtors are in material default of the plan by the fact the plan is overextended.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on October 6, 2021. Dckt. 63. Debtors state the delinquency will be cured prior to the hearing date and that the Debtors have sent a cashier's check for the full \$850 sum in their attached exhibit to demonstrate that (Dckt. 65). However, Debtors' opposition does not address the fact the plan is overextended.

DISCUSSION

Delinquent

Debtors are \$520.00 delinquent in plan payments, which represents multiple months of the \$330.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$850.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the plan is overextended past the term of 60 months (78 months). Section 6.04 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

27. [17-24755-E-13](#) **ROBBIE/CHRISTI HOLCOMB** **MOTION TO DISMISS CASE**
[DPC-6](#) **Candace Brooks** **9-22-21 [130]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis

that:

1. The debtors, Robbie Allan and Christi Anna Holcomb (“Debtor”), are delinquent in plan payments under the confirmed plan

DEBTORS’ RESPONSE

Debtors filed a Response on October 6, 2021. Dckt. 134. Debtors state that they fell behind on their plan due to Debtor(s) having medical procedure(s) and issues with clients not paying Debtor(s) in a timely fashion. Debtors further state that they will send a payment on or before October 18, 2021 for the \$4,130 via Moneygram to cure the default.

DISCUSSION

Delinquent

Debtors are \$3,090.00 delinquent in plan payments, which represents multiple months of the \$1,040.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$4,130.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtor, Kenneth W. Johnson ("Debtor"), under their current plan, will exceed the 60 month limit by taking 65 months to complete his plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 67. Debtor states the delinquency will be cured prior to the hearing date.

DEBTOR'S FIRST MODIFIED PLAN

The curing of the default is to be by a proposed First Modified Chapter 13 Plan filed on October 5, 2021. Debtor increases the monthly plan payments to \$4,365.00 per month to complete the Plan within sixty months. Dckt. 72.

DISCUSSION

Plan and Motion to Confirm Filed

Debtor has filed a Modified Plan (Dckt. 72) and Motion to Confirm (Dckt. 69) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with

particularity upon which relief is based and that the Declaration in support (Dckt. 71) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

29. [20-24660-E-13](#) **FRANCISCO SOLORIO** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mark Wolff** **9-13-21 [78]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2021. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Francisco Javier Solorio ("Debtor"), is delinquent in plan payments under the confirmed plan

2. The Debtor has not filed a new amended Chapter 13 plan.

DEBTOR'S REPLY

Debtor filed a Reply on October 6, 2021. Dckt. 82. Debtor states that COVID has caused issues with filing as Counsel's staff got infected. Debtor states that the issues are resolved, and the delinquency and issue with the plan will be cured prior to the hearing date.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a supplemental reply on October 12, 2021. Dckt. 84. Debtor no longer opposes the Trustee's Motion to Dismiss.

DISCUSSION

Delinquent

Debtor is \$3,337.14 delinquent in plan payments, which represents one month of the \$3,337.14 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$6,774.28. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 22, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is XXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Elmer Noe Crespín and Alma Yared Crespín ("Debtor"), are delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 21, 2021. Dckt. 346. Debtor states they have remitted an additional payment of \$2,700.00. Debtor also explains they have had inconsistent income due to the ongoing pandemic and thus the Debtor needs additional time to cure the delinquency.

DISCUSSION

Delinquent

Debtor are \$8,041.96 delinquent in plan payments, which represents multiple months of the \$2,685.49 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the August 4, 2021 hearing, counsel for Debtor reported that it has not been cured, but requests a continuance. The Trustee concurred given the age of this case and efforts of Debtor.

October 20, 2021 Hearing

Nothing further has been filed by either the Trustee or Debtor in connection with the default

or any cure by Debtor. At the hearing, **xxxx**

31. **20-21562-E-13** **SALLY MUNGWA** **AMENDED MOTION TO DISMISS CASE**
DPC-1 **Ronald Holland** **9-24-21 [43]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 8, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxxxx , and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Sally Laura Mungwa ("Debtor"), has a plan that is overextended. The Trustee bases this on the pre-petition residential secured claims arrearage being higher and tax claims being higher than the amounts stated in the Plan.

The Trustee's counsel provides a Declaration (Dckt. 44) stating that Debtor's counsel transmitted an order confirming the plan increasing payments to address these issues, but that proposed plan was not processed (lodged with the court) by the Trustee's office. Trustee's counsel computes that the proposed increase to \$1,631 would still not be sufficient.

DEBTOR'S REPLY

Debtor filed a Reply on October 5, 2021. Dckt. 46. Debtor states the original Order Confirming Plan did not get processed and was never signed by the Court. An updated Order Confirming Plan has now been submitted to the trustee that resolved the issues set forth in the Motion to Dismiss.

Debtor states that she concurs with Trustee's Counsel's financial assessment and a new Order Confirming with a sufficiently increased plan payment has been transmitted to the Trustee.

DISCUSSION

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the plan will take approximately 70 months to complete rather than 60. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**, and the case ~~is dismissed.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Office of the United States Trustee on September 21, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Robert Stuart MacBride ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 39. Debtor states the delinquency will be cured by November 1, 2021. Further, Debtor states that he has been dealing with unexpected time off from work due to his employer's family members falling ill. Debtor also had a surgery set on October 6, 2021 due to an eye injury. Debtor states that even with these setbacks he believes he can get the Plan current by November 1, 2021.

Debtor states that he is working with family and friends to provide financial assistance, which he states will not be in the form of incurring additional debt.

DISCUSSION

Failed to Commence Plan Payments

Debtor did not commence making plan payments and is \$3,174.05 delinquent in plan payments, which represents a part of one month of the \$3,228.62 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Debtor has had a series of five bankruptcy cases (including the current case) pending in this court since 2016. Those prior cases have all been dismissed.

It appears that Debtor is attempting to save his residential property in which he computes having more than \$200,000 in equity. Unfortunately, it appears that he is slipping further and further into arrears.

At the hearing, **XXXXXXX**

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on April 12, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is XXXX

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Gregory Roger Borgerson and Cherie Marquez ("Debtor"), have failed to provide tax returns in a case that has been open for over a year.
2. Debtor has engaged in unreasonable delay that is prejudicial to creditors, after resulting in no confirmed plan for over a year.

DISCUSSION

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments

for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3).

Failure to Confirm a Plan

According to Trustee, Debtor's failure to confirm a plan is prejudicial to creditors. Debtor's case was filed on April 14, 2020. Dckt. 1. Since then, Debtor has filed four plans with the first three having been denied confirmation. The hearing on the fourth proposed plan, filed December 23, 2020, has been continued twice with the latest hearing scheduled for May 11, 2021, the same date and time as this Motion to Dismiss. Trustee notes that Debtor's Enslinger provisions continue to be objected to by the affected Creditors and by Trustee, with the court having sustained their objections. As noted by Trustee, Debtor has indicated having applied for loan modifications yet no evidence has ever been provided.

Lack of plan confirmation is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing the Parties agreed to a continuance to afford Debtor additional time to prosecute this case.

June 16, 2021 Hearing

No supporting pleadings or any other documents have been filed by either Trustee or Debtor regarding this continued Motion to Dismiss. Debtor's fourth Amended Plan (filed December 23, 2021) was denied confirmation on May 11, 2021. Dckts. 128, 130.

On May 20, 2021, Debtor filed an *Ex Parte* Motion to Approve Trial Modification with PHH Mortgage Services. Dckt. 132. The court granted the *Ex Parte* Motion and the order was entered on June 1, 2021. Dckt. 136.

On June 10, 2021, Debtor filed an *Ex Parte* Motion to Approve Trial Modification by Bosco Credit II Trustee Series 2010-1. Dckt. 132.

At the hearing counsel for the Trustee reported that the matter may be continued in light of Debtor's efforts to date and the reported filing of a modified plan to be made.

Trustee's Status Report

On October 6, 2021, the Chapter 13 Trustee, David Cusick, filed a Status report. Trustee reports the Debtors will need to pay \$10,960.22 to the Trustee in order to be current on the Plan by the October 20, 2021 hearing. The monthly payments due under the Plan are \$2,831.85.

October 20, 2021 Hearing

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx** and **xxxxxxx**

34.	<u>19-25872-E-13</u> <u>DPC-1</u>	TIMOTHY BELL Paul Bains	CONTINUED MOTION TO DISMISS CASE 7-6-21 [22]
-----	----------------------------------------------------------------------	------------------------------------------	-------------------------------------------------------------------------

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted and the bankruptcy case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Timothy Scott Bell ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 21, 2021. Dckt. 26. Debtor states that either the delinquency will be cured prior to the hearing date or a modified plan will be filed.

DISCUSSION

Delinquent

Debtor is \$4,500.00 delinquent in plan payments, which represents multiple months of the \$2,250.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan

payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file a modified plan is not evidence that resolves the Motion.

The Trustee reported at the hearing that the Debtor is still delinquent. Counsel for the Debtor reported that a cure or modified plan was intended, but Debtor has not been in communication these last two weeks.

The Trustee concurred with a continuance of the hearing.

October 20, 2021

Nothing further has been filed by the Trustee or the Debtor concerning this Motion and Debtor's default. At the hearing, **XXXXXXX**

Such defaults are cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)..

The Motion is granted and this case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Pete Aldret Garcia ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 21, 2021. Dckt. 86. Debtor, who rents properties, states that the continued moratorium on evictions has stemmed his income. *Id.* Debtor will file and serve a Motion to Sell real property, which will bring the plan current.

DISCUSSION

Delinquent

Debtor is \$16,658.07 delinquent in plan payments, which represents multiple months of the \$5,511.35 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a Motion to Sell that can bring Debtor current is not evidence that resolves the Motion.

At the hearing, counsel for the Debtor reported that the Plan provides for the sale of property, but there are tenants in the property. For the first property to be sold, the tenant will be in the property until November 2021.

The Trustee did not oppose a continuance to allow Debtor and counsel to address these

matters.

October 20, 2021

Nothing further has been filed by the Trustee or the Debtor concerning this Motion and Debtor's default. At the hearing, **XXXXXXX**

Such defaults are cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)..

The Motion is granted and this case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Timothy A. West and Rosa Meria West ("Debtor"), is delinquent in plan payments.
2. The Plan is overextended.

DEBTOR'S REPLY

Debtor filed a Reply on October 6, 2021. Dckt. 64. Debtor states they will either file a new plan with the court or concede to dismissal.

DISCUSSION

Delinquent

Debtor is \$5,580.00 delinquent in plan payments, which represents multiple months of the \$1,860.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the Plan will complete in 69 months as opposed to 60 months pursuant to the confirmed Plan. Section 5.03 of the Plan makes that failure a

breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. The court's October 18, 2021 review of the Docket disclosed that no new plan or motion to confirm had been filed.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

37. [19-27175-E-13](#) ADAM/SHERRI NEWLAND MOTION TO DISMISS CASE
[DPC-2](#) Peter Macaluso 9-22-21 [\[71\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis

that:

1. The debtors, Adam S. Newland and Sherri A. Newland (“Debtor”), failed to provide Trustee with requested bank statements.
2. Debtor failed to provide Trustee with 2020 tax returns.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 75. Debtor states that they have complied with the Trustee’s request to provide copies of their bank statements and 2020 tax returns.

DISCUSSION

Failure to Comply with the Terms of the Plan

Debtor failed to comply with the terms of § 7 the confirmed First Modified Plan. Dckt. 58. Debtor is required to segregate \$1,250.00 each month into a separate savings account and to provide copies of the bank statements to the Trustee. Pursuant to 11 U.S.C. § 1307(c), the Trustee may request the court to dismiss a case due to a material default by the debtor with respect to a term of a confirmed plan.

Unfortunately for Debtor, a promise to provide Trustee with the requested documents is not evidence that resolves the Motion. The court’s October 18, 2021 review of the Docket disclosed that no plan or motion to confirm have been filed.

The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Michael Everett Scallin ("Debtor"), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed a Supplemental Opposition on October 6, 2021. Dckt. 161. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$2,490.00 delinquent in plan payments, which represents multiple months of the \$844.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

39. [19-21278-E-13](#)
[DPC-1](#)

ALBERT GIL
Mark Wolff

MOTION TO DISMISS CASE
9-22-21 [\[35\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The Debtor, Albert A. Gil (“Debtor”), is delinquent on plan payments.
2. The plan exceeds the permitted time period.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 39. Debtor states he has yet to complete his Chapter 13 Plan with a lump sum as previously anticipated as he has not yet received his inheritance. Debtor says due to COVID-19, the sale of the assets and settlement of the estate has been

delayed. Further, due to the delays in receiving his inheritance, Debtor is going to file a Second Modified Chapter 13 Plan.

DISCUSSION

Delinquent

Debtor is \$37,800.00 delinquent in plan payments, which represents multiple months of the \$500.00 and \$8,375.00 plan payments. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Plan Exceeding 60 Months

Debtor is in material default under the Plan because according to Trustee, the Plan will complete in 78 months instead of 27 months pursuant to the confirmed plan. Section 6.04 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Plan and Motion to Confirm Filed

Debtor has filed a Second Modified Plan (Dckt. 46) and Motion to Confirm (Dckt. 41) to address the defaults. In the Motion Debtor states that he will now fund the balance of the Plan with his inheritance from his late Father's estate.

From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 43) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Valaree Jade St. Mary ("Debtor"), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 6, 2021. Dckt. 177. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$420.00 delinquent in plan payments, which represents multiple months of the \$210.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

41. [18-25581](#)-E-13 **DANIELLE DELGADO** **MOTION TO DISMISS CASE**
[DPC-8](#) **Mary Ellen Terranella** **9-22-21 [139]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Danielle N. Delgado (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on September 28, 2021. Dckt. 143. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the

\$480.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

42. [18-25581-E-13](#) **DANIELLE DELGADO** **MOTION TO DISMISS CASE**
 [DPC-8](#) **Mary Ellen Terranella** **9-22-21 [139]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Danielle N. Delgado (“Debtor”), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 28, 2021. Dckt. 143. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the \$480.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Eileen Leona Hecht ("Debtor"), is delinquent on plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 37. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Delinquent

Debtor is \$12,909.28 delinquent in plan payments, which represents multiple months of the \$3,303.66 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

44. [21-20894-E-13](#)
[DPC-2](#)

ELISEI BRANDUSA
Gary Fraley

MOTION TO DISMISS CASE
9-13-21 [31]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 13, 2021. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted and the bankruptcy case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Elisei Brandusa (“Debtor”), does not have a plan pending.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 7, 2021. Dckt. 35. Debtor states the delinquency will be cured prior to the hearing date.

DISCUSSION

Amended Plan

Debtor had not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 21, 2021, at the time of the filing of the Motion to Dismiss.

On October 8, 2021, Debtor filed a Motion to Confirm Amended Plan. Dckt. 38. However, no Amended Plan has been filed by Debtor.

The Motion further states that Amended Income and Expense Schedule have been filed. However, there was no such filing.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The Debtor, Jesus Avila ("Debtor"), is delinquent in plan payments.
2. Debtor's Plan will exceed the 60 month commitment period provided for in the confirmed plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 4, 2021. Dckt. 22. Debtor states the delinquency will be cured prior to the hearing date and will be filing a modified plan to raise his monthly plan payments in order to complete the plan within 60 months.

DISCUSSION

Delinquent

Debtor is \$400.00 delinquent in plan payments, which represents one month of the \$400.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because Debtor will not complete the Plan within

the required 60 months. A total of 47 months remain under the confirmed Plan where Debtor will pay \$400.00 per month. This would leave Debtor paying a total of \$18,800.00. However, \$23,289.92 is needed, less Trustee fees, to pay secured and priority claims and attorney fees. Therefore, the Plan will complete in 74 months as opposed to 60 months pursuant to the confirmed Plan. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Amended Plan and Motion to Confirm Filed

Debtor has filed an Amended Plan (Dckt. 26) and Motion to Confirm (Dckt. 25) have been filed. Upon review of the Motion to Confirm, the court notes that it fails to comply with the basic pleading requirements established by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 9013 (which parallels Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 for adversary proceedings) requiring that the grounds upon which the relief is based must be stated with “particularity.” The court has clearly and repeatedly addressed this basic pleading requirement and uniformly applied it for many years.

Here, the grounds upon which Debtor bases relief in the form of an order confirming the Amended Chapter 13 Plan consist of:

The Debtor proposes that the Chapter 13 Plan filed herewith be approved as the Debtor's plan.

Debtor is amending his plan to increase his monthly plan payments in order to insure that all creditors, fees, and expenses are paid so that the plan can complete in 60 months.

The existing plan was confirmed on 9/5/2020 (see Docket# 15).

A true and correct copy of the proposed Amended plan is filed herewith and made a part hereof.

Motion, Dckt. 25.

The court first notes that Debtor is not seeking to merely confirm an amended plan, but is seeking to modify an existing confirmed plan pursuant to 11 U.S.C. § 1329. Considering the above grounds, even if taken as true based on the mere assertion, such do not provide a basis for confirming a modified plan which requirements therefore are in 11 U.S.C. §§ 1329, 1325, 1322.

Debtor states in his Declaration (which is not the Motion) that he can now increase his plan payment by 24%, from \$400 to \$496, “because my take-home income is greater than it was when I filed this case.” Declaration, ¶ 7; Dckt. 28. Debtor does not explain how his take-home income has increased.

Debtor also states that he will file “Amended” Schedules I and J to show the greater income and how he can increase his Plan payment by 24%. *Id.* Such Amended Schedules would correct the “error” in the original Schedules and date back to the July 23, 2020 filing of this case. If there was a post-petition change, then Debtor would be signing under penalty of perjury Supplemental Schedules documenting such post-petition change in income or expenses. Amended Schedules were filed on

October 13, 2021, correcting the “error” in the original Schedules and documenting that Debtor had this extra take-home income since this case was filed in July 2020.

On original Schedule I (Dckt. 1, 29-30) Debtor stated having monthly gross income of \$5,971.33. His deductions include (\$268.67) for insurance and (\$1,061.67) for Domestic support obligations.

On Amended Schedule A, Debtor states having monthly gross income of \$6,153.86, a difference of \$182.53. However, there are no deductions for rent or Domestic support obligations.

On the First Amended (relied upon by the court for confirmation of the Plan in this case), Dckt. 14) and Second Amended Schedules J, Dckt. 31, Debtor reports having three minor dependants. On First Amended Schedule J, the court notes that Debtor states under penalty of perjury:

- A. He has \$0.00 for rent/mortgage, utilities, home maintenance or repairs. However, on Schedule I, Dckt. 1, Debtor states that he has (\$827.67) deducted from his paycheck, as well as (\$970.67) for “Apt Taxbl (deduction for rent paid by employer).”
- B. For food and housekeeping supplies for Debtor and three children, the total expense was \$550.
 - 1. Allowing (\$50) a month for housekeeping supplies, that leaves (\$500) for food for the four family members. In a thirty day month, that is (\$4.16) per person per meal.
- C. For clothing for one adult and three children, their clothing expense is (\$75) a month. That would be (\$225) a year per person (including three growing children) for the five years of the Plan.
- D. For medical and dental expenses, Debtor states they are (\$45) a month.
- E. Debtor lists (\$300) a month for transportation, consisting of fuel, maintenance, repairs, and registration.

With the Second Amended Schedule J, Dckt. 41, Debtor now states having various different costs and expenses, which include:

- A. Rent expenses of (\$1,300) is given.
- B. Renter’s insurance of (\$10) is now stated.
- C. Debtor now lists having (\$120) in electricity and (\$50) in water/sewer/garbage, the First Amended Schedule J stated that those expenses were (\$0.00).
- D. Debtor states having slashed food and housekeeping expenses to (\$300) a month.
 - 1. Allowing (\$50) a month for housekeeping expenses, that leaves \$250 a

month for the Debtor and three minor children. For a thirty day month, this is only (\$2.08) per person per meal.

- E. Debtor has now stated he has (\$50) a month in childcare costs, while on First Amended Schedule J it was stated to be (\$0.00) a month.
- F. Debtor reduces the monthly clothing expense for Debtor and the three growing child dependants to (\$50) a month, which is (\$12.50) a month for Debtor and the three children.
- G. Debtor now states that his monthly medical and dental expenses are (\$200), a 344% increase from the (\$45) a month stated on First Amended Schedule J.
- H. Debtor decreases his fuel, maintenance, repair, and vehicle registration expense to (\$250) a month. Allowing (\$20) a month for registration and (\$40) a month for maintenance/repairs, Debtor then has (\$190) a month for fuel. At \$4.25 a gallon, that allows Debtor to purchase 44 gallons of gas a month. Assuming that Debtor averages 18 miles to the gallon in his 2007 GMC Denali with 200,000 miles on it, which indicates that the monthly repair and maintenance expenses for the 14 year old vehicle may be higher, (Schedule A/B, Dckt. 1 at 11), that allows Debtor to drive 729 miles a month, averaging 190 miles a week (24 miles a day).
- I. Debtor now lists life and health insurance on Second Amended Schedule J rather than as a deduction on Amended Schedule I.
- J. Debtor also lists a child support obligation of (\$1,100) a month as an expense on Second Amended Schedule rather than as a deduction on Amended Schedule I.

These Amended Schedules make some very substantial changes in expenses without any explanation provided by Debtor for such changes/errors. Also, some expenses, such as fuel and food, appear to be unreasonably low. It makes it appear that the Schedules are drafted to reach the preordained necessary monthly net income number for Debtor to state under penalty of perjury, rather than accurate income and expense number.

It appears Debtor needs a “reset” to meet with counsel, come up with accurate income and expense number from the start of the case (rather than multiple “amendments” to correct errors).

Cause exists pursuant to 11 U.S.C. § 1307(c) to dismiss this case. The Motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

46. [21-22998](#)-E-13 **ALI AKBAR AND SIDRAH
NADEEM
Peter Macaluso** **ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-28-21 [16](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 30, 2021. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 23, 2021.

<p>The Order to Show Cause is sustained, and the case is dismissed.</p>

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Ricky and Denise Tanwar ("Debtors"), are delinquent in plan payments under the confirmed plan.

DEBTOR'S RESPONSE

Debtors filed a Response on October 6, 2021. Dckt. 31. Debtors state that the delinquency was caused by medical surgeries that forced Debtor(s) to take time off, and Debtor lost her job. The delinquency will be cured prior to the hearing date thanks to a catch up payment with help from family.

DISCUSSION

Delinquent

Debtors are \$1,344.00 delinquent in plan payments, which represents multiple months of the \$549.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$1,893.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

FINAL RULINGS

48. [18-25600-E-13](#) **KEVIN OWENS AND SONYA** **MOTION TO DISMISS CASE**
[DPC-1](#) **WHITE** **9-21-21 [28]**
 Mohammad Mokarram

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021, Dckt. 34; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 34, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 30, 2021. By the court’s calculation, 51 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, William D. Reddin (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on September 15, 2021. Dckt. 127. Debtor requests additional time to work with Creditors’ counsel to execute a stipulation and motion to amend the Plan. Debtor filed the Second Amended Plan on August 2, 2021. Dckt. 120. On September 21, 2021, an Order Confirming Second Amended Chapter 13 Plan was issued, however, on September 17, 2021 Debtor filed a Motion to Amend Second Amended Plan due to the stipulation of Debtor and Creditors. Dckt. 132, 128.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on September 17, 2021. Dckt. 128. The court has reviewed the Motion to Confirm the Amended Plan and the Stipulation in support filed by Debtor. Dckt. 130. The Motion was granted by the court on September 21, 2021. Dckt. 132.

With a confirmed Amended Plan, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

50.	<u>19-24802</u> -E-13 <u>DPC</u> -2	GREGORY/CHO FRENCH Catherin King	CONTINUED MOTION TO DISMISS CASE 5-19-21 <u>[116]</u>
-----	------------------------------------------------------------------------	-------------------------------------	-----------------------------------------------------------------------------

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Trustee filed an *Ex Parte* Motion to Dismiss the pending Motion on September 16, 2021, Dckt. 140; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 140, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

DEBTOR DISMISSED: 9/3/2021
JOINT DEBTOR DISMISSED:
9/3/2021

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor as stated on the Certificate of Service on August 12, 2021. The court computes that 59 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees.

The Order to Show Cause is discharged as moot, and the bankruptcy case shall proceed in this court.

The court having dismissed this bankruptcy case by prior order filed on September 3, 2021 (Dckt. 28), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Beverly Joe Bauer (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$4,578.12 delinquent in plan payments, which represents multiple months of the \$2,039.41 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

53. [20-25605](#)-E-13 CURTIS/CARMEN BURKS CONTINUED MOTION TO DISMISS
[DPC-3](#) Candace Brooks CASE
6-28-21 [61]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Trustee filed an *Ex Parte* Motion to Dismiss the pending Motion on October 5, 2021, Dckt. 81; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 81, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Ricardo Albert Romo and Adrienne Renee Romo (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

55. [21-21211](#)-E-13

**WILLIE NORMAN
Matthew DeCaminada**

**CONTINUED ORDER TO SHOW CAUSE
FAILURE TO PAY FEES
8-5-21 [\[40\]](#)**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 5, 2021. The court computes that 76 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$76.00 due on August 2, 2021.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

56. [19-22716-E-13](#)
[DPC-3](#)

JUAN MENDOZA
Thomas Gillis

MOTION TO DISMISS CASE
9-21-21 [\[60\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

57. [17-23018-E-13](#)
[DPC-5](#)

JEFFREY/RHIANNON CLEMENT
Thomas Amberg

MOTION TO DISMISS CASE
9-21-21 [\[88\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss Trustee’s Motion to Dismiss on October 12, 2021, Dckt. 95; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jeffrey Eugene Clement and Rhiannon Marie Clement (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 95, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

58. [19-25222-E-13](#)
[DPC-2](#)

PAMELA AMBUNAN
Peter Macaluso

MOTION TO DISMISS CASE
9-15-21 [\[61\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 15, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Pamela Discipulo Ambunan (“Debtor”), has an over extended plan.

2. The Debtor is delinquent on plan payments.

DISCUSSION

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the Trustee calculates the plan will take 85 months to complete versus 60 proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Delinquent

Debtor is \$2,820.00 delinquent in plan payments, which represents multiple months of the \$1,630.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Jermon Torja Williams (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$1,734.00 delinquent in plan payments, which represents multiple months of the \$456.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

60. [19-26523-E-13](#)
[DPC-2](#)

JULIAN HARDY
Richard Jare

CONTINUED MOTION TO DISMISS
CASE
7-6-21 [43]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021 Dckt. 59; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Julian Chappell Franz Hardy (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 59, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall

proceed in this court.

61. [18-25226-E-13](#)
[DPC-4](#)

RONALD GREGORY
Justin Kuney

MOTION TO DISMISS CASE
9-21-21 [82]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Ronald Lee Gregory (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$1,925.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

62. [18-20228-E-13](#) **ROBERT/DONNA SEYMOUR** **MOTION TO DISMISS CASE**
[DPC-3](#) **Mark Briden** **9-21-21 [96]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021 Dckt. 102; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Robert Cecil Seymour and Donna Rae Seymour (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 102, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

63. [18-21328-E-13](#) **CHRISTINE NAVARRETE** **MOTION TO DISMISS CASE**
[DPC-3](#) **Michael Hays** **9-21-21 [50]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed a "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021 Dckt. 56; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Christine Ellen Navarrete ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 56, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Kimberly Anne Beckham ("Debtor"), is delinquent on plan payments.

DEBTOR'S SUBSEQUENT MOTION

On October 7, 2021, Debtor filed a motion for voluntary dismissal of the Chapter 13 case pursuant to 11 U.S.C. § 1307(b).

DISCUSSION

Delinquent

Debtor is \$789.02 delinquent in plan payments, which represents multiple months of the \$305.46 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

65.	<u>18-26334-E-13</u> <u>DPC-3</u>	AMY EVERSON Marc Carpenter	MOTION TO DISMISS CASE 9-21-21 <u>[41]</u>
-----	----------------------------------------------------------------------	-------------------------------	---------------------------------------------------------------

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 21, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Amy Everson (“Debtor”), is delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$1,017.00 delinquent in plan payments, which represents multiple months of the \$349.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$1,366.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtors, Jeri Lee Rose Covert McCormick and Jenifer Lee McCormick (“Debtor”), are delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$2,598.00 delinquent in plan payments, which represents multiple months of the \$1,299.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$3,897.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

67. [19-22941-E-13](#) **MONICA MARIA** **MOTION TO DISMISS CASE**
[DPC-4](#) **Grace Johnson** **9-22-21 [104]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Monica Lynn Maria (“Debtor”), is delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$1,600.00 delinquent in plan payments, which represents multiple months of the \$600.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$2,200.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

68. [21-21844-E-13](#) **THOMAS/WHITNEY JOHNSON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Steele Lanphier** **9-21-21 [24]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 14, 2021, Dckt. 39; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Thomas Winton Johnson and Whitney Eriksmoen Johnson (“Debtors”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 39, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

69. [21-21944](#)-E-13

DAVID TAYLOR
Dale Orthner

**ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
8-2-21 [18]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 2, 2021. The court computes that 79 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on June 26, 2021 and \$78.00 July 26, 2021. At the time of the order, subsequent payments of \$78.00 were to be due on August 25, 2021 and September 24, 2021

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured. The first payment was received on June 23, 2021 for \$79.00. Receipt 32007 by 17. The second payment was received on August 3, 2021 for \$78.00. Receipt 32252 by 13. The third payment was received on August 25, 2021 for \$78.00. Receipt 32390 by 17. The final payment was received on September 24, 2021 for \$78.00. Receipt 9526 by 55.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

70. [21-20745-E-13](#)
[DPC-2](#)

LESLIE COX
Eric Schwab

MOTION TO DISMISS CASE
9-22-21 [46]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Leslie Theresa Cox ("Debtor"), is delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$7,150.00 delinquent in plan payments, which represents multiple months of the \$4,075.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$11,225.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

71. [19-27749-E-13](#)
[DPC-1](#)

ROBERT TOOLE
Thomas Amberg

MOTION TO DISMISS CASE
9-22-21 [\[37\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 12, 2021, Dckt. 44; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Robert Lee Toole (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 12, 2021, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Denise Arlene Brown (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Betty Bayongan Mustard (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on October 12, 2021, Dckt. 44; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Tony Smith (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Ernest Fermen Cruz ("Debtor"), is delinquent in plan payments under the confirmed plan.

DISCUSSION

Delinquent

Debtor is \$5,771.00 delinquent in plan payments, which represents multiple months of the \$4,335.50 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$10,106.50. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

76. 21-20859-E-13 **TERRY MAYS** **MOTION TO DISMISS CASE**
 DPC-2 **Jeffrey Ogilvie** **9-15-21 [32]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 15, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Terry Jo Mays (“Debtor”), is delinquent in plan payments under the confirmed plan
2. The Debtor has not filed a new amended Chapter 13 plan.

DISCUSSION

Delinquent

Debtor is \$2,933.00 delinquent in plan payments, which represents multiple months of the \$1,066.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$3,999.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 27, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

77. [18-25761](#)-E-13 **ERNEST/ELIZABETH RIDLEY** **CONTINUED MOTION TO DISMISS**
[DPC-1](#) **Michael Hays** **CASE**
7-7-21 [\[36\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on September 29, 2021, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of

the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by ERNEST FLETCHER RIDLEY and ELIZABETH ANN RIDLEY (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Timothy Daniel O'Donnell and Geraldine Jeanette O'Donnell ("Debtor"), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$1,560.00 delinquent in plan payments, which represents multiple months of the \$780.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

79. [19-25567](#)-E-13 **RANDELL/MARIA COMSTOCK** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Steven Shumway** **9-22-21 [77]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

80. [21-22075](#)-E-13 **RESHMA SHARMA** **ORDER TO SHOW CAUSE - FAILURE**
 Peter Macaluso **TO PAY FEES**
 8-6-21 [27]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 6, 2021. The court computes that 75 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$78.00 due on August 2, 2021.

<p>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</p>

The court’s docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

81. [19-21277-E-7](#) **JASON/ TIFFANIE RUPCHOCK** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Peter Cianchetta** **9-22-21 [182]**

**CASE CONVERTED TO CHAPTER 7:
9/24/21**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Name of Debtor’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on September 23, 2021, however,

converting the case to a proceeding under Chapter 7. Dckt. xx. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 24, 2021. *McFadden*, 37 B.R. at 521.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, the case having been converted to one under Chapter 13, and upon review of the pleadings, evidence, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

82.	<u>19-22077-E-13</u> <u>DPC-2</u>	DARIN DOWD Mary Ellen Terranella	MOTION TO DISMISS CASE 9-22-21 [67]
-----	----------------------------------------------------------------------	---------------------------------------------------	------------------------------------------------------

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on October 12, 2021, Dckt. 73; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Darin Wayne Dowd ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal

Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

83. [19-24178-E-13](#)
[DPC-3](#)

JOSE HERNANDEZ
Peter Macaluso

MOTION TO DISMISS CASE
9-22-21 [112]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Jose Luis Hernandez ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$855.00 delinquent in plan payments, which represents multiple months of the \$285.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Marcis Allan Beutler and Marti Leeann Beutler (“Debtor”), is delinquent on plan payments
2. The Plan is overextended.

DISCUSSION

Delinquent

Debtor is \$2,830.00 delinquent in plan payments, which represents multiple months of the \$1,375.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the plan will complete in 63 months rather than 60. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Debtor filed a non-opposition to Trustee's Motion to Dismiss the case on October 6, 2021. Dckt. 125.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Kaly Huynh Vo (“Debtor”), is delinquent on plan payments.
2. The Debtor’s Plan is overextended.

DISCUSSION

Delinquent

Debtor is \$15,568.08 delinquent in plan payments, which represents multiple months of the \$3,986.48 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the plan will complete in 66 months

rather than 60. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Jonathan Acosta Taeu and Sherry Ann Moises (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$2,300.00 delinquent in plan payments, which represents multiple months of the \$1,150.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

87. [18-20387-E-13](#) **ERIC FERRARI** **MOTION TO DISMISS CASE**
[DPC-3](#) **James Keenan** **9-22-21 [56]**

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Eric William Ferrari (“Debtor”), is delinquent on plan payments.

DISCUSSION

Delinquent

Debtor is \$2,500.00 delinquent in plan payments, which represents multiple months of the \$1,250.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is Granted, and the case is dismissed.

88.	<u>21-22487</u> -E-13 <u>DPC-1</u>	ANGELA BEASLEY Sarah Shapero	MOTION TO DISMISS CASE 8-23-21 <u>[34]</u>
-----	-----------------------------------------------------------------------	---------------------------------	---------------------------------------------------------------

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 23, 2021. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Angela Beasley (“Debtor”), failed to appear at the meeting of creditors.
2. No Plan has been served.
3. No verification of income provided to the Trustee.
4. No tax return provided to the Trustee.
5. Failed to provided business documents.

DISCUSSION

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Never Noticed Initial Plan

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

89. [21-21690](#)-E-13
[DPC-2](#)

RHODA MASON
Yasha Rahimzadeh

MOTION TO DISMISS CASE
8-23-21 [\[31\]](#)

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 13, 2021, Dckt. 48; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 48, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

90.	<u>19-25692-E-13</u> <u>DPC-2</u>	MARIA FATIMA IBASAN Gabriel Liberman	CONTINUED MOTION TO DISMISS CASE 7-6-21 [37]
-----	----------------------------------------------------------------------	-------------------------------------------------------	-------------------------------------------------------------------------

Final Ruling: No appearance at the October 20, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 7, 2021 Dckt. 48; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Maria Fatima Delgado Ibasan (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014

and 7041, Dckt. 48, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

91. [19-21199-E-13](#)
[DPC-3](#)

TED/JUNE KATSINIS
Len Reid Reynoso

MOTION TO DISMISS CASE
9-22-21 [60]

Final Ruling: No appearance at the October 20, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Ted Katsinis and June A. Katsinis ("Debtor"), is delinquent on plan payments.
2. The Plan is overextended.

DISCUSSION

Delinquent

Debtor is \$5,508.00 delinquent in plan payments, which represents multiple months of the \$1,836.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Material Default for Exceeding Sixty Months

Debtor is in material default under the Plan because the Plan will complete in 100 months as opposed to 60 months pursuant to the confirmed Plan. The Trustee computes more than a \$40,000 shortfall in plan payments that are necessary to fund the proposed plan. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.